

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CIVIL REVISION APPLICATION No. 52 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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MADHURIBEN SHASHIKANT JOSHI - Applicant(s)

Versus

SARLABEN YASHESHCHANDRA DESAI - Opponent(s)

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Appearance :

MS KJ BRAHMBHATT for Applicant(s) : 1, MS VARSHA BRAHMBHATT for Applicant(s) : 1,
None for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 06/02/2006

ORAL JUDGMENT

The petitioner-plaintiff-appellant is before this Court being aggrieved of the judgement and order dated 15th June 2001 passed by the learned Judge, Small Causes Court, Vadodara in Rent Suit No.515 of 1984, whereby the learned Judge was pleased to dismiss the plaintiff's suit

for possession of the suit premises. The learned Judge was pleased to direct the defendant to pay a sum of Rs.2645/- to the plaintiff towards arrears of rent and mesne profit.

2. The plaintiff being aggrieved of the same had filed Regular Civil Appeal No.133 of 2001, which came to be dismissed on 31st March 2004 by the learned Joint District Judge, Fast Track Court No.5, Vadodara.

3. This Civil Revision Application was filed before this Court on 27th August 2004. The revision memo was affirmed on 25th August 2005. The matter is taken up for effective hearing only today, i.e. 6th February 2006. These dates are mentioned with a view to show that the party is not serious/ sincere in pursuing the remedy before this Court.

4. Short facts giving rise to the present litigation are that, 'the plaintiff had filed the suit to recover arrears of rent, possession of the suit premises, mesne profit and cost of the suit. Initially, the suit was filed on the ground of personal, bona fide requirement and arrears of rent. Thereafter, during the pendency of

the suit, long after 12 years an application was moved for amendment of the pliant to add a ground under section 13(1)(k) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("the Act" for brevity). That application was granted on 21st July 1998. At that time also the party did not take necessary care to get the appropriate issue framed from the learned Judge so as to see that the issue framed as Issue No.5A, which reads as under:

"Whether the plaintiff proves that the premises have not been used without reasonable cause for the purpose for which they were let for continuous period of six months immediately preceding the date of the suit?" (emphasis supplied)

is framed so as to take into consideration the date of grant of amendment.

The issues are raised in presence of both the parties through the learned advocates. More particularly, this issue was raised on grant of an application. That being so, the party should have taken care that the issue is

framed in appropriate terms.

Besides, this Court has held in the matter of Champaben, d/o Bhatubhai Vs. Gopinath Gangadhar (decd.) by his heirs Ramprakash Gopinath & others, reported in (1980) XXI GLR 709 that,

“In a suit for possession between a landlord and a tenant the cause of action arises on service of notice terminating the tenancy. The rest are all grounds for possession as required by section 12 or 13 of the Act. Adding one more ground to the same cause of action cannot be said to be a change of cause of action. It is now well settled that pending the suit between a landlord and tenant for possession after the notice terminating tenancy, any number of grounds can be added if they are based on subsequent events which had occurred after the filing of the suit.” (emphasis supplied)

In the present case the plaintiff-present petitioner has not produced the statutory notice on record. He has thus, not satisfied subsec.(2) of section 12 of the Act.

Subsec.(2) of sec.12 of the Act reads as under:

"12. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases,

(2)No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non payment of the standard rent of permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases "has been served upon the tenant" in the manner provided in section 106 of the Transfer of Property Act, 1882 (VI of 1882)."

(emphasis supplied)

5. The learned advocate appearing for the petitioner before this Court vehemently submitted that when 'reply to the notice' is produced on record, the Court should presume the 'service of notice' and compliance of subsec.(2) of section 12 of the Act. If that is so, then in no case, 'statutory notice' is required to be placed on the record of the case. Besides, 'the

contents of the notice' do not get proved from the fact that a notice was served. The plaintiff, who comes before this Court has to prove its case by placing all necessary documents before the Court and has also to prove the contents thereof as provided in law. Only because the tenant has replied the notice, the landlord-plaintiff does not get relieved of the burden of producing and proving the contents of such notice. The courts below have rightly held that, 'the suit is not maintainable' in absence of the contents of the notice being proved.

6. The learned advocate for the petitioner relied upon the following decisions:

(i) In the matter of Vishwambhar and others Vs. Laxminarayana (dead) through LRs and another, reported in A.I.R. 2001 SC 2607.

(ii) In the matter of Champaben, d/o Bhatubhai Vs. Gopinath Gangadhar (decd.) by his heirs Ramprakash Gopinath & others, reported in (1980) XXI GLR 709; and

(iii) In the matter of Sampath Kumar Vs. Ayyakannu and another, reported in A.I.R.

2002 SC 3369.

None of these decisions is applicable to the facts of the present case.

7. In view of the aforesaid, the present Civil Revision Application fails and the same is dismissed. No order as to costs.

(RAVI R. TRIPATHI, J.)

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